

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD W. DAVIS and DEPARTMENT OF JUSTICE,
FEDERAL PRISONS SYSTEMS, Boron, Calif.

*Docket No. 97-1848; Submitted on the Record;
Issued April 16, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained a recurrence of disability causally related to his accepted emotional condition.

On September 13, 1989 appellant, then a 45-year-old correctional officer, filed an occupational disease claim alleging that he sustained stress causally related to factors of his federal employment. In accompanying statements, appellant related that in November 1987 inmates at the Atlanta penitentiary took 100 staff members hostage. Appellant related that the inmates chased him with knives and that he escaped by shooting several inmates, killing one. Appellant further related that subsequent to the riot, he was transferred to another prison where he was harassed by management and received unfair evaluations.

On May 4, 1990 the Office of Workers' Compensation Programs referred appellant, together with the case record and a statement of accepted facts, to Dr. Jeffrey Hyde for a second opinion evaluation.

In a report dated August 3, 1990, Dr. Hyde diagnosed an adjustment reaction with mixed emotional features and found that appellant's symptoms had "largely resolved." Dr. Hyde noted that appellant had resigned from the employing establishment effective February 1, 1990. He opined that appellant had no residual impairment and no continuing psychiatric illness. In a supplemental report dated October 12, 1990, Dr. Hyde concluded that the diagnosed condition of an adjustment reaction was due solely to the factors of employment listed in the statement of accepted facts and found that appellant was totally disabled from approximately September 1989 to February 1990.

By letter dated November 16, 1990, the Office informed appellant that it had accepted his claim for an adjustment disorder and that the medical evidence supported total disability from September 22, 1989 to November 10, 1989. The Office requested that appellant file a claim for wage loss to receive compensation for that period.

Appellant took no action on his claim until June 1, 1996, when he filed a notice of recurrence of disability alleging that he had post-traumatic stress disorder (PTSD).

By letter dated June 26, 1996, the Office informed appellant of the information needed to support his claim for a recurrence of disability. In response, appellant submitted a letter dated July 1, 1996, in which he stated his belief that he had lost earnings due to his continuing emotional problems.¹

By decision dated July 30, 1996, the Office denied appellant's claim for a recurrence of disability causally related to his accepted emotional condition.

By letter dated August 16, 1996, appellant requested a review of the written record by an Office hearing representative. In support of his request, appellant submitted a statement dated August 5, 1996 in which he related that from 1990 to the present he knew that he had mental problems but did not know that he had PTSD due to his experience during the prison riot. Appellant stated that in 1996 he visited a friend who worked with him during the prison riot and that following the visit he experienced persistent memories of his experiences at the penitentiary.

In a report dated June 17, 1996, Dr. Lewis Sprunger, a Board-certified psychiatrist, stated that appellant related difficulty sleeping due to memories from a 1987 prison riot. Dr. Sprunger further addressed appellant's history of marital difficulties and experiences in Vietnam. He diagnosed PTSD and possible major depressive disorder.²

By decision dated December 9, 1996 and finalized December 11, 1996, an Office hearing representative affirmed the Office's July 30, 1996 decision after finding that appellant had not submitted rationalized medical evidence supporting a causal relationship between his current condition and his accepted employment-related emotional disorder.

Appellant requested reconsideration and, in support of his request, submitted a report dated January 27, 1997 from Dr. Donald E. Lange. Dr. Lange indicated that he had reviewed the statement of accepted facts as well as appellant's medical records. He diagnosed post-traumatic stress disorder and a recurrent moderate major depressive disorder. He found that after the 1987 riots "while [appellant] was experiencing symptoms of PTSD and depression, he was unable to recognize the source of his difficulty and need for treatment until June 1996." Dr. Lange stated:

"Based on the records available to me and his presentation, I certainly can relate his difficulties to the incident of the riot and the subsequent problems, especially if he were not able to recognize or, for that matter, enter treatment. Since June, it would appear that his mental health and medical intervention has been at least

¹ In a letter dated July 24, 1996, appellant requested that the Office combine his claim for a recurrence of disability causally related to his emotional condition with his accepted hearing loss case. The Office informed appellant that it could not combine the two cases

² Appellant submitted reports from a licensed clinical social worker; however, these reports do not constitute those of a physician under the Federal Employees' Compensation Act; *see* 5 U.S.C. § 8101(2).

partially successful and he is improving. Therefore, I certainly agree that continuing therapy is not only warranted but is necessary.

By decision dated April 14, 1997, the Office denied modification of its prior decision.

The Board finds that the case is not in posture for a decision.

While appellant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.³ When an uncontroverted inference of causal relationship is raised, the Office is obligated to request further information from an employee's attending physician.⁴ In the instant case, while Dr. Lange's report is not sufficiently rationalized to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that he had a recurrence of disability or continued need for medical treatment due to his accepted employment-related emotional condition, it constitutes sufficient evidence in support of appellant's claim to require further development of the record by the Office.⁵ The Board notes that there is no medical evidence of record refuting a causal relationship between appellant's current emotional condition and his employment injury. On remand, the Office should refer appellant, together with the case record and a statement of accepted facts, for examination by an appropriate medical specialist. After such further development as the Office deems necessary, it should issue a *de novo* decision.

³ *Dennis J. Lasanen*, 43 ECAB 549 (1992).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *See Horace Langhorne*, 29 ECAB 820 (1978).

The decisions of the Office of Workers' Compensation Programs dated April 14, 1997, December 9 and July 30, 1996 are set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.
April 16, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member